

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4896 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

N V MEHTA

Versus

STATE OF GUJARAT AND OTHERS.

Appearance:

MR MANOJ N POPAT for Petitioner
MS B.R.GAJJAR AGP for M/S PATEL ADVOCATES
for Respondent No. 1 -State of Gujarat

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 10/04/2000

ORAL JUDGEMENT

The case was called out in the first round, when the learned counsel for the petitioner was not found available. The case was adjourned for the time being and the case is again called out in the second round and the

learned counsel for the petitioner is still not available.

2. I have heard Ms. B.R.Gajjar, learned Assistant Government Pleader for M/s. Patel Advocates on behalf of respondent no.1 -State of Gujarat. The petitioner has in the present writ petition seeking directions for his promotion to the post of Head Clerk and also to the post of Office Superintendent after quashing the order passed by the Gujarat State Civil Service Tribunal on 20th January, 1990. It is stated by the petitioner that he is senior to Smt. Gokani and Shri Parmar. Aforesaid Smt. Gokani and Shri. Parmar were promoted to the post of Head Clerk and Office Superintendent respectively superceding the petitioner, and therefore, the petitioner should be appointed in the said posts at least from the dates, his juniors and others promoted in the said posts. It is an admitted position that initially in the seniority list of Junior Clerks, names of Smt.Gokani and Shri Parmar have been shown senior to the petitioner. It is stated by the petitioner in the application that on getting the promotion to the post of Senior Clerk, an employee is required to pass the Departmental Examination. It is stated that Shri. Parmar was promoted to the post of Senior Clerk with the condition that he will pass the Departmental Examination. It is further alleged that even though Shri. Parmar has not passed the Departmental Examination, he has been illegally promoted to the post of Head Clerk. It is, therefore, stated by the petitioner that since Shri. Parmar has not passed the Departmental Examination, he should be reverted to the post of Junior Clerk and in his place, the petitioner, who has passed the Departmental Examination, should be promoted to the post of Head Clerk, and thereafter to the post of Office Superintendent.

3. Ms. Gajjar, learned Assistant Government Pleader appearing on behalf of the respondent State submitted that the petitioner, after his entry in the service in the post of Junior Clerk, has been shown as junior to Smt. Gokani and Shri Parmar. The seniority list of 1981 has been finalized and on the basis of that seniority list, the promotions were made. The petitioner is admittedly junior to Smt. Gokani and Shri Parmar, and therefore, the petitioner cannot say that Shri Parmar or Smt. Gokani is senior to him. It is further submitted by the learned counsel for the respondent that the Government has relaxed the condition regarding passing of the Departmental Examination. It is also submitted by the learned counsel that inspite of the fact that the

Government has relaxed the condition from passing the Departmental Examination for promotion to the next post, Shri Parmar has cleared the Departmental Examination, and therefore, it cannot be said that Shri Parmar was illegally promoted or is being continued to the post of Head Clerk even though he has not cleared the Departmental Examination. It further appears from the judgment of the Gujarat Civil Service Tribunal that the Government has modified the recruitment rules for the Officers and other staff of the Forensic Science Laboratory of the State, and the modified recruitment rules have been published by the Government in the year 1985. It is further submitted by the learned counsel for the respondent that according to the amended recruitment rules, Shri Parmar was eligible for promotion and therefore, there is no illegality in the promotion of Shri Parmar to the post of Head Clerk.

4. I have gone through the judgment and order passed by the learned Member, Gujarat Civil Service Tribunal. The Tribunal has given sufficient reasons for rejecting the claim of the petitioner. The Tribunal has also given the reasons for coming to its conclusion about the seniority of the petitioner as well as of Shri Parmar. Learned Tribunal has clearly held that according to the instructions and the amended recruitment rules, Shri Parmar has been correctly promoted to the post of Head Clerk. I have gone through the judgment and order passed by the Tribunal and I do not find any ground to interfere with the judgment and order passed by the Gujarat Civil Service Tribunal in Appeal No.39 of 1988. Consequentially I do not find any merits in the present writ petition and accordingly, writ petition is dismissed. I make no order as to costs. Rule is discharged.

Date:10/4/2000. (P.K.SARKAR,J.)

ccshah